

**ECONOMIC DEVELOPMENT
& ENERGY COMMITTEE
OF THE
SUFFOLK COUNTY LEGISLATURE**

Minutes

A meeting of the Economic Development & Energy committee of the Suffolk County Legislature was held at the Evans K. Griffing Building, 300 Center Dr., Riverhead, NY 11901 on Tuesday, **June 25, 2002** in the Auditorium at 12:30 A. M.

Members Present:

Legislator Jon Cooper, Chairman
Legislator Fred Towle, Vice Chairman
Legislator Vivian Fisher, Member
Legislator George Guldi, Member

Members Absent:

Legislator Allan Binder, Member

Also in Attendance:

Paul Sabatino, Counsel to the Legislature
Bill Shannon, Suffolk County Public Works
David Grier, Suffolk County Attorney
Warren Green, Aide to Legislator Alden
All other interested parties.

Minutes taken by:

Eileen Schmidt, Legislative Secretary

(The meeting was called to order at 12:50 A. M.)

CHAIRMAN GULDI:

The Ways and Means Committee meeting needs to come to order in this room please. Could you let us conduct business? We have a special meeting to respond to the committee's Davis Law letter with respect to the proposed **IR 1478-02 the capital budget -- amending the capital budget appropriating funds in connection with reimbursement to LIPA for relocation of Long Island Power Authority facilities on Suffolk County Construction Projects**. Mr. Grier I understand you're here for the on behalf of the County's Attorney's Office on this issue, is that correct?

MR. GRIER:

Correct.

CHAIRMAN GULDI:

Okay. Committee members were provided during the meeting a substantial packet that with a cover letter dated attorney/client work product that dated June 24, 2002 with substantial attachments in response to our letter. The question I have for you Mr. Grier is in light of having read the letter and been quite impressed with it my question is, is this County Executive's resolution to approve this settlement is the County Executive going to withdraw this resolution as a result of the manner set forth in this letter or what are we going to do with it?

MR. GRIER:

Well, actually the resolution is to provide funding for relocation cost. It doesn't actually have a settlement that's for approval.

CHAIRMAN GULDI:

That's not my recollection. Do you have a copy of the resolution, Counsel?

LEGISLATOR FISHER:

It was appropriating funds.

CHAIRMAN GULDI:

It was appropriating funds I remember that, but I thought it was --

LEGISLATOR FISHER:

-- (inaudible) LIPA.

CHAIRMAN GULDI:

And reimbursement with pursuant to an agreement to reimburse them otherwise we wouldn't have a basis to do it. I thought they were linked.

MR. GRIER:

The agreement has not been -- is not in a form, which had been finalized sufficiently to present to you. However, Public Works had needed in order to progress certainly projects needed additional funding and that's why it was brought to at the time it was prior to the agreement actually being formalized and ready for presentation to the Legislature.

CHAIRMAN GULDI:

So how can we appropriate funds without an agreement?

MR. GRIER:

As a general proposition the Commissioner of Public Works and proceeding with projects within appropriations that are available he could proceed and do all work that's necessary to accomplish the project. However, in a number of instances we had projects which there was not sufficient funding so we had to come back to the Legislature to obtain funding to complete those projects which are in progress as we speak.

CHAIRMAN GULDI:

Except for the small problem of the question as it would that raise publicly this committee as to the legal basis if any for LIPA standing in the shoes of LILCO under the LIPA act to claim dollar

one in reimbursement for these projects.

MR. GRIER:

Well, without dealing with the legal analysis here in public session cause that --

CHAIRMAN GULDI:

-- well, that existing question --

MR. GRIER:

-- that is a question which --

CHAIRMAN GULDI:

-- we don't need to address the substance of, but how do we get from there to appropriating money, how could we appropriate money when we have a question as to the legal basis as to whether or not we should be incurring the cost?

MR. GRIER:

It's a situation where there is a difference of opinion between LIPA and ourselves with the interpretation construction of the LIPA act and attentive responsibilities. We were in the process of --

CHAIRMAN GULDI:

-- I agree with him on that.

MR. GRIER:

Thank you.

CHAIRMAN GULDI:

Go ahead, I'm sorry.

MR. GRIER:

The global settlement, which is what has been spoken about, is what was going to be presented for a longer-term basis. We were looking right now of obtaining funding to accomplish projects, which are in the process of being worked on. So that's --

CHAIRMAN GULDI:

-- without resolving the legal question as to whether or not we're authorizing paying encumbering funds to pay LIPA on an issue that isn't resolved.

MR. GRIER:

On the global basis, yes, it was not it has not been resolved and we're at a stand still.

CHAIRMAN GULDI:

It hasn't been resolved on any basis, has it?

MR. GRIER:

At this point correct. We do not have an agreement with LIPA for this.

CHAIRMAN GULDI:

So how can we possibly allocate funds without settling that question? Counsel, do you -- Counsel to the Legislature, do you have an opinion on that subject?

MR. SABATINO:

This resolution would appropriate the \$455,000 for "LIPA Relocation Cost on Suffolk County Construction Projects", so it's not an appropriation for the construction project. It's an appropriation to cover the LIPA relocation cost and the backup memo that was attached with talked about it being pursuant to an agreement with the Long Island Power Authority to evenly share the cost of relocating LIPA's facilities. They're in conflict with capital program projects. It was on the basis of those documents that were submitted to the committee that the legislation was tabled several times and at the last committee meeting the committee had asked for a copy of the agreement. And the statement that was made by Mr. Garfinkle at that time was that there was no agreement. So I don't see how you could legally pass this resolution and still preserve whatever rights or options you wish to, you know, to preserve with regards to this issue because you're giving the money for relocation cost. It's not just a general appropriation.

CHAIRMAN GULDI:

Do you want to reply to that Mr. Grier?

MR. GRIER:

Well, since this Legislature has indicated it's putting aside the fact that we at this point do not have -- have not reached agreement with LIPA for the cost sharing since this committee has indicated its' desire not to go forward until a decision is made as to what the best course of action will be we have not, you know, the projects have not -- there's been no undertaking of relocation for those -- for a number of the projects. And the basis, like I said before, had there been enough funding in the budget projects could have been progressed within the appropriations that were available. And the whole issue started and brought it to the Legislature's attention was the fact that we did not have sufficient funding because LIPA had as of last June drawn the line in the sand and said to us, we're not going to relocate the facilities any longer with out the County paying certain cost and that why we've gotten to this point.

CHAIRMAN GULDI:

I understand that. The question, Counsel, let me ask you Mr. Grier, included in the confidential packet are certain documents that marked received by the Department of Public Works, June 12 and thereabouts with respect to specific projects. Are those documents in your opinion confidential or are those public documents that can be discussed in public session or example, this stuff, Dave?

MR. GRIER:

Yeah, I know I'm just looking at it myself. I would -- those particular documents they were submitted to us by LIPA.

CHAIRMAN GULDI:

So there can't be any possible privilege or restriction against discussing them in public.

MR. GRIER:

Correct. This portion of it would be public documents.

CHAIRMAN GULDI:

These documents purport to be the charges for the various projects that have been completed by

DPW or are these projected projects for future completion, which is it?

MR. GRIER:

My understanding is it's a combination of the two.

CHAIRMAN GULDI:

Okay. Lets take the first one, Bill Shannon's here? Come on down.

LEGISLATOR TOWLE:

Would you mind before you got there, I just had a question on it.

CHAIRMAN GULDI:

Okay. Well, all right I'm going to yield to Legislator Towle for global questions before we get to specifics, but I have a whole array of type and category questions with respect to these documents Mr. Shannon.

LEGISLATOR TOWLE:

I just want to get a better understanding of exactly what's before us. Right now you're asking for money to move forward on projects where potentially there's an issue that LIPA should be contributing and we should be contributing based on an agreement that maybe presented to the Legislature. Is that right?

MR. GRIER:

The intention was once we had reached terms that were acceptable it was going to be presented to the Legislature for ultimate approval.

LEGISLATOR TOWLE:

But in essence the terms would be that we would split this 50/50 and that's what this in essence would be doing.

MR. GRIER:

That's what the bottom line of the agreement is to share the costs 50/50.

LEGISLATOR TOWLE:

How long is it before the agreements going to be presented to the Legislature? What's the time frame on it?

MR. GRIER:

At this point it's not cause we don't have any terms and conditions which LIPA has last presented to us are not acceptable.

LEGISLATOR TOWLE:

Okay, and what they presented to us was what?

MR. GRIER:

Well, one of the biggest problems that we have with --

CHAIRMAN GULDI:

-- well, I don't know. Are we treading on the substance of the agreement are the problems with it is that or is that not proper for executive session, I believe it is.

MR. GRIER:

I think we should go into executive session.

CHAIRMAN GULDI:

Hold that question.

LEGISLATOR TOWLE:

Forget that question. I'll go a little more generic.

CHAIRMAN GULDI:

Okay.

LEGISLATOR TOWLE:

What type of timeframe do you think it is before you're going to have some agreement to present to the Legislature? Are you the person negotiating the agreement or --

MR. GRIER:

I'm not the person negotiating and given where we are right now I couldn't give you a timeframe cause there have been no official responses to our last comments from LIPA.

LEGISLATOR TOWLE:

Who's the person from the County Attorney's Office that's handling this?

MR. GRIER:

Robert Garfinkle is the one who's negotiating the document with LIPA.

LEGISLATOR TOWLE:

Okay. And the policy in the past prior to it being LIPA, it being LILCO was that they picked up the full tab.

MR. GRIER:

They were required to by law as a PSC regulated utility.

LEGISLATOR TOWLE:

So let me ask this question I guess and maybe it's more {Rich McGowan} not Bill, but why are we holding up Public Works projects while the attorney's are arguing what should be done? Why aren't we just paying for this and, you know, at the end if we wind up agreeing to 50/50 then we need 50% of whatever they owe us. If we wind up not agreeing that and we're going to sue LIPA then we're going sue them for the whole amount. Why hold up projects while this ongoing debate or, you know, conference is going on between the County Attorney's Office and, you know, LIPA which could be a month, it could be six months, it could be nine months, it could be a year. I mean, why piecemeal it this way? Why not just pay for whatever the freight is for whatever LIPA and us should split or LIPA should pay completely and until we get done arguing this move forward with the projects. Why are we holding up projects?

MR. GRIER:

Well, there are some projects which are and are currently in process that do require relocations and that's one of the reasons why we needed the additional funding to deal with that issue so the projects could be completed.

LEGISLATOR TOWLE:

Assuming that the agreement is approved by the Legislature and the Executive, but lets not go on that assumption for a second. Let's go on the assumption of how it's existed currently. They owe us all the money; why not outlay the money and look to go after them or depending on how our settlement goes, you know, maybe at the end we settle for 50/50 and they owe us a million dollars from 17 projects that we've done over the last 12 months. I mean, why piecemeal it this way though that I'm missing that part.

MR. GRIER:

I'd rather, yeah, (inaudible) and response to that there are number of question to deal with (inaudible) why we're approaching the situation the way we have deals with the different legal analysis so I'd rather not answer that question directly.

LEGISLATOR TOWLE:

One final question. Doesn't this set a precedent that if we're prepared to do this 50% and we're still not negotiated that, you know, that's kind of like tipping our side? You know, maybe it's me, but it would be like --

CHAIRMAN GULDI:

I think that question clearly calls for exec. session though.

LEGISLATOR TOWLE:

Okay. So those are my three I guess for exec. session.

CHAIRMAN GULDI:

Okay.

CHAIRMAN COOPER:

I have one other question before we go to executive session. David, do you know what the arrangement is in Nassau County?

CHAIRMAN GULDI:

Well, we've been asking that question for three months and that's addressed at length in the confidential memo that's before us. So I think that that should also be handled in exec. session. The one thing I did wanted to get to in public session is with respect to the LIPA provided documents for jobs. The first one I have Mr. Shannon in order is the Covert bridge replacement CP 5371 and that happens to be the top one in the order in the packet I was given. Do you have that before you?

MR. SHANNON:

Yes, I do, Mr. Chairman.

CHAIRMAN GULDI:

Okay. I'm looking at --

MR. SHANNON:

Mr. Chairman just to I wanted to inform you of something. This information that we received that we have in the packet comes from KeySpan. It was transmitted directly from KeySpan and in the KeySpan cover letter they considered this proprietary and confidential information.

CHAIRMAN GULDI:

How can it be proprietary and confidential if they're seeking reimbursement from us for it?

MR. SHANNON:

That's what was on the cover letter.

CHAIRMAN GULDI:

Counsel, do you -- Counsel of the Legislature, do you see any prohibition in making me making any specific inquiries about the content of these documents notwithstanding that cover letter?

MR. SABATINO:

No, I looked at the documents quickly I didn't see anything that filled that category, but is it true this wasn't one -- was one of those made standard cover sheets that just says --

CHAIRMAN GULDI:

-- everything we say is proprietary and you can't disclose it to anybody.

MR. SABATINO:

Or did it specifically say something that makes specific reference to the document, do you recall what the --

CHAIRMAN GULDI:

-- you know what I can handle this, this way, okay. Looking at that document just referred to CP 5371 received January 12th, looking at the charges on that document can you tell me what the price per foot for wire installed in that project was? Can you tell me that from the document?

MR. SHANNON:

From the document that you have in your hand I cannot.

CHAIRMAN GULDI:

Can you tell me what that -- what type of wire was installed at -- in this job from this document or not?

MR. SHANNON:

The document that you have I believe is dated on June 12th.

CHAIRMAN GULDI:

June 12th.

MR. SHANNON:

I received subsequent information from them regarding that which I can provide to you immediately.

CHAIRMAN GULDI:

Okay. Well, --

MR. SHANNON:

-- I shared the same concern that you did and asked for further documentation.

CHAIRMAN GULDI:

All right. Well, I see. I looked at these documents and said noted for example how I couldn't determine how many men or how many hours were engaged in this project from this document. Could you?

MR. SHANNON:

No, I could not.

CHAIRMAN GULDI:

And with respect to the item circuit switching, do you have any idea what precise service was rendered in connection with that item? What is that?

MR. SHANNON:

Okay. In order to accomplish this project we had a culvert that ran along Park Avenue. In order to remove the existing structure and to drive sheeting to install the new structure the overhead wires were in conflict with the equipment and with the sheeting that was going in. Based on that information LIPA cut the power, lowered the lines, re-routed and re-switched through different circuits.

CHAIRMAN GULDI:

So that basically that circuit switching involves turning the power off and re-routing it and then turning it back on?

MR. SHANNON:

Right and de-energizing.

CHAIRMAN GULDI:

Okay, I understand. Those kinds of questions and concerns had throughout the documentation in the brief time I've had to look at it, but given the fact you have supplemental documentation I'll hold my further questions and request the supplemental documentation because I still cannot do an informed analysis based on the stuff that's been provide today as just illustrated. With respect to the opinion letter proposed that was delivered this morning I found the opinion letter to be quite insightful and surprising and frankly was satisfied with the opinion letter as to the legal issues. Do you want it to go into executive session to pursue the question we just asking?

SPEAKER:

(inaudible)

CHAIRMAN GULDI:

All right. So I'll make a motion to go in --

MR. SABATINO:

-- before you do that just on the record I just want to be clear, are there any projects that are actually currently underway where we are paying relocation cost because you feel there's sufficient funds in those projects?

MR. SHANNON:

We have not been -- we have vouchers for the first project, which was Daniel Webster Drive. Other projects we have not been vouchered for and we are not continuing to commit to any

payments on future projects.

CHAIRMAN GULDI:

I think you just (inaudible) the question off. Did we commit to make payment on past projects?

MR. SHANNON:

Yes, we have.

CHAIRMAN GULDI:

How did we make that commitment?

MR. SHANNON:

Dave.

CHAIRMAN GULDI:

Who made that commitment on behalf of the County?

MR. GRIER:

From what I understand during the negotiations that we had started with LIPA --

CHAIRMAN GULDI:

-- my question was who? Who calls for a name?

MR. GRIER:

My office had indicated that based on a discussion with LIPA we would --

CHAIRMAN GULDI:

-- who made, who authorized the payment? Who? Was it in the County Attorney's Office or in the DPW? Lets start there. Who?

MR. GRIER:

The Public Works had asked my office whether or not they commit to making any payments regarding relocation costs pending the negotiations.

CHAIRMAN GULDI:

I don't want to know what your office told Public Works. I just heard the man say that we made a commitment. My question is who made that commitment. Not who talked to who in the County Attorney's Office. Who made the commitment?

MR. GRIER:

The letters that actually went to LIPA regarding commitments came out of Public Works.

CHAIRMAN GULDI:

Who signed them?

MR. SHANNON:

I did.

CHAIRMAN GULDI:

Okay. At whose direction did you sign those letters?

MR. SHANNON:

I consulted with the County Attorney's Office and they recommended that we --

CHAIRMAN GULDI:

-- okay, well, I don't want to hear what they recommended. You consulted with the County Attorney's Office, did you consult with the Commissioner, Deputy Commissioner or --

MR. SHANNON:

-- that's correct with the Commissioner.

CHAIRMAN GULDI:

With the Commissioner, okay.

LEGISLATOR TOWLE:

Who at the County Attorney's Office.

CHAIRMAN GULDI:

Yeah. Who individually did you speak to there?

MR. SHANNON

That would be Bob Garfinkle.

LEGISLATOR TOWLE:

Can I ask a stupid question before we go into executive session?

CHAIRMAN GULDI:

Well, I don't know if we wanted to ask that question in public session.

SPEAKER:

I'm glad he asked the question.

LEGISLATOR TOWLE:

I'm glad you asked the question too. How could you guys agree to do that without an agreement or without becoming before the Legislature, you know, which is basically what you're doing now?

CHAIRMAN GULDI:

Does the words ultra vires mean anything here?

LEGISLATOR TOWLE:

I mean, you're here before us now because you need our approval for this funding and you're going to come before us with an agreement which you've already done on your own independently without our authorization or knowledge, I mean, in essence.

MR. GRIER:

As far as the accusation as ultra vires I would disagree. The ultra vires considering that the prosecution --

LEGISLATOR FISHER:

-- could you tell me what ultra vires mean?

MR. GRIER:

Invalid.

CHAIRMAN GULDI:

Without authority.

MR. SABATINO:

Beyond authority.

LEGISLATOR FISHER:

Thank you.

CHAIRMAN GULDI:

It's Latin.

LEGISLATOR FISHER:

Yeah, but it wasn't making sense ultra, I couldn't hear beyond --

MR. SABATINO:

-- beyond authority which means you act without authority; beyond the authority you possess.

MR. GRIER:

As this Legislature has authorized capital projects to proceed the Commissioner of Public Works within his appropriations has the authority to proceed and complete those projects. It was a decision that the ultimate policy determination of a global settlement would come before this Legislature.

LEGISLATOR TOWLE:

So in other words, you're telling me that if the capital projects you're short for there's almost a half a million dollars had additional funds that the Department of Public Works and the County Attorney's Office would sign off on paying of these without having any approval or direction of the County Legislature as a policy issue to agree to this 50% split.

MR. GRIER:

The intent was since we had come to a basic understanding as to what the terms were going to be we could progress the projects and then ultimately once the agreement was presented to the Legislature and we go the sign off then we would have all the pieces would be in place. It was a matter of being able to progress the projects without holding everything up. And again, it was the -- those projects that had appropriations we felt were within the Commissioner's authority to go forward.

LEGISLATOR TOWLE:

Okay. Isn't it also within the Commissioner's authority to issue a change order on a project?

MR. GRIER:

Yes. Under the current framework, yes, it is.

LEGISLATOR TOWLE:

Okay. Then why not do that under this project? On any of these?

MR. GRIER:

Again, with certainty these projects there weren't sufficient appropriations to do the change orders to the extent that --

CHAIRMAN GULDI:

-- to think --

LEGISLATOR TOWLE:

-- okay.

MR. GRIER:

-- they needed to complete the project.

CHAIRMAN GULDI:

I'm trying to figure out how to frame this question because I think I got short circuit in the melt down going here. You mean to tell me, Counsel, in your opinion that if the Commissioner decided to pay XYZ contracting of sum in connection with a Public Work project in which XYZ company had no legal claim to or right to of any nature or description that that act would be authorized as long as there was money in the capital project?

MR. GRIER:

You presume that and this goes to our assessment of the legal analysis --

CHAIRMAN GULDI:

-- which we're going to save for exec. session. Hold on without going to that, if you conclude that there was no legal right to the claim how can the Commissioner have authority to make those approved payments?

LEGISLATOR TOWLE:

This is a policy issue. This isn't a payment for a project. To go a step further --

CHAIRMAN GULDI:

I mean, are you going to tactical this one or are you going to (inaudible) about it?

LEGISLATOR TOWLE:

To go a step further to add it to Legislator Guldi's question when we approve these projects the money was approved for the project based on the work that was presented to us. We never authorized any other outside agreements as part of any of those projects as far as I'm concerned. If there's extra money in the project the Commissioner can't decide to go throw up some new walls or add a roadway that was outside of the scope of the original project and this is clearly outside of the scope that we were going to pay for 50% of what we apparently, you know, may now owe LIPA.

MR. GRIER:

I would disagree to the extent that with these road projects relocation of facilities was anticipated when the project was original designed. Things have changed since the original design and LIPA is now saying they want to be reimbursed, they want to be paid for this cost where as up until last year they had never been paid for those cost.

CHAIRMAN GULDI:

Okay. All right. Let me -- in addition to the backup to make the charges discernable that you've already indicated you'd send to me, Mr. Shannon you indicated that there were letters or letters signed by you to LIPA in connection with these projects authorizing payment, is that correct?

MR. SHANNON:

That's correct.

CHAIRMAN GULDI:

I would like to call for production of every single one of them on every project that you or anyone else at DPW has ever signed regarding reimbursement to LIPA for Public Works projects relocation costs or for any other charge. In addition to that, do we reimburse the Water Authority for relocation expenses? Do we as the department, do you know?

MR. SHANNON:

We do not.

CHAIRMAN GULDI:

We do not. Are they or are they not a public authority?

MR. SHANNON:

They are a public authority.

LEGISLATOR FISHER:

What about the Long Island Rail Road? Did we every have a problem with the Long Island Rail Road?

CHAIRMAN GULDI:

Legislator Fisher's question using the microphone is, do we reimburse the Long Island Rail Road?

LEGISLATOR FISHER:

I'm sorry. Have we every had any issue with the Long Island Rail Road another authority, have we ever?

MR. SHANNON:

The Long Island Rail Road we do pay for flag protection and work within their right away, yes.

LEGISLATOR FISHER:

Okay.

CHAIRMAN GULDI:

For flag protection and what was the second part?

MR. SHANNON:

Work within their grade crossing work things of that nature we do pay for.

LEGISLATOR FISHER:

Okay. So we're going back to a kind of ambiguous situation where we have one authority where we don't and one that we do pay for relocation or construction impacts?

MR. SHANNON:

That's correct.

LEGISLATOR FISHER:

Okay, which complicates it rather than simplifies it.

MR. SHANNON:

Historically the Suffolk County Water Authority has not charged us or sought reimbursement for their changes in their work in the field.

LEGISLATOR FISHER:

Okay. If I could just go, Mr. Chair --

CHAIRMAN GULDI:

-- go ahead.

LEGISLATOR FISHER:

If I could just go back to how the thought process worked on the part of the Department of Law and DPW and maybe more calmly. Prior to a year ago you had never paid LIPA for relocation, relocation fees?

MR. SHANNON:

That's correct.

LEGISLATOR FISHER:

Okay. And then LIPA began to bill you bill us for relocation fees when there were projects involved or charging us not billing us, but charge -- imposing --

MR. SHANNON:

-- that's correct. LIPA representatives from LIPA came to the Department of Public Works began briefing us on their opinion in terms of their legal claim to be reimbursed and sought to begin a negotiation process of how we might be able to reach a cost sharing agreement with regard to their relocation costs.

LEGISLATOR FISHER:

Who was involved in the negotiations at the outset when they came to you with this?

MR. SHANNON:

At the very beginning the budget director from LIPA appeared with representatives from KeySpan and I met with him in conjunction with Hank {Schenk} and --

LEGISLATOR FISHER:

-- I don't know who is --

MR. SHANNON:

-- he's I'm sorry, he's a former DPW employee, that was the first meeting where they had approach the subject with us.

LEGISLATOR FISHER:

Were we represented by counsel; were you represented by counsel at those meetings?

MR. SHANNON:

There were no attorneys at the meeting.

LEGISLATOR FISHER:

There were no attorneys. Okay, on either side?

MR. SHANNON:

That's correct.

LEGISLATOR FISHER:

Okay. And what came out of those initial meetings? Were you discussing splitting it 50/50 at that time?

MR. SHANNON:

No, no.

LEGISLATOR FISHER:

Were you discussing the amount of the charges?

MR. SHANNON:

No, we were not. They had made the overture that they would like to enter into cost sharing agreement --

LEGISLATOR FISHER:

-- oh, so, but you're using the word cost sharing.

MR. SHANNON:

Right, and we had well, the first overture was that LIPA felt that that they were entitled to a reimbursement of 100% and obviously --

LEGISLATOR FISHER:

-- that's what they started with --

MR. SHANNON:

-- and right they started with and obviously our position was they were entitled to 0% based on --

CHAIRMAN GULDI:

-- well, except now we're talking about legal positions and that probably shouldn't be in public session.

LEGISLATOR FISHER:

No, actually, we're talking about initial discussions where there were no attorneys involved. It was their initial discussion.

CHAIRMAN GULDI:

I'm rather curious about how their having discussions about the legal obligations to pay or not

pay with no attorneys present on neither side. That was interesting.

MR. SHANNON:

They asked I use the term legal loosely. They offered they suggested that we should pay them 100%. We suggested that we should pay 0%. At that point they began exchanging their legal documents with us and I forward them on to Bob Garfinkle for his opinion.

LEGISLATOR FISHER:

Okay. So it was early on in the discussions that you said we better call in the attorneys after you met with them and saw that they were looking for. Were you surprised with these initial demands that we pick up 100%? Had you ever thought that we would have to pay for these relocation fees?

MR. SHANNON:

At the time, --

LEGISLATOR FISHER:

-- they were charges I should use --

MR. SHANNON:

-- I didn't have any reaction. I knew that they were a now a power authority and that would maybe possible.

LEGISLATOR FISHER:

But they had been a power authority for a few years already --

MR. SHANNON:

-- that's correct --

LEGISLATOR FISHER:

-- and hadn't exercised this.

MR. SHANNON:

To categorize as surprise not necessarily surprise, but it was not expected.

LEGISLATOR FISHER:

Okay.

MR. SHANNON:

I just had one more last --

LEGISLATOR FISHER:

Okay. I'm sorry I just had -- I just wanted to follow this history a little bit further along. When we first looked at this resolution in committee, correct me if I'm wrong members of the Energy Committee, but it seem to me that it was being presented to us almost as if it were pro forma that you thought we would just approved it as -- and appropriate the funds as you were working out the details. Is that, David, kind of how it came to us? Is that how you anticipated us, that we would react to it that we would say, okay the money will be appropriated and then you'll work out the -- you'll fine tune it and work out the proportions and work it out legally?

MR. GRIER:

Well, we had been in the process of finalizing the negotiations so that we could present you with an agreement to approve. I think it was more an issue of the timing didn't coincide necessarily with having the document ready in the necessity of needing fundings to progress the projects and --

LEGISLATOR FISHER:

-- but it really hasn't been finalized yet.

MR. GRIER:

No, because the negotiations with LIPA have at this point stopped because we can not reach terms on certain provisions in the contract, which are important to us.

LEGISLATOR FISHER:

Okay. Thank you, David. Thank you, Bill.

LEGISLATOR TOWLE:

Okay. I just have one last question, Mr. Chairman and then we can --

CHAIRMAN GULDI:

-- are you running this meeting or am I?

LEGISLATOR TOWLE:

You guys figure out who's running the meeting later. I just had a question, you know, Budget Review pointed something out to me on page 421 of our -- their report. There's a line here in reference to status of projects. It says the Timber Point West Projects still has remaining construction including burying of utility lines, supplying electrical to slips and repaving the entire parking area. The funds initially included for the Timber Point West portion of this project are insufficient for our remaining construction needs therefore funds are coming out of the Shinnecock portion of the project which the way I'm reading this is that you diverted money from the Shinnecock project to pay for the additional cost of burying the utility lines and if I'm not mistaken you're also now short in the Shinnecock project and have come to the Legislature for more money in that regard. Is that true?

MR. GRIER:

I think those projects would be under Parks jurisdiction and I'm not sure if Mr. Shannon would have any information about the needs of those projects in getting them completed.

LEGISLATOR TOWLE:

Shinnecock, isn't that under DPW? Why would that be under Parks?

CHAIRMAN GULDI:

Well, some of Shinnecock is Parks and some of it is DPW for the canal and the jetties.

LEGISLATOR TOWLE:

Not a problem, well, have Parks at the next meeting well, have plenty of time. Okay.

CHAIRMAN COOPER:

Just one more question. Bill, do you have any idea of approximately as to how much money's

have been reimbursed to-date to LIPA by Suffolk County?

MR. SHANNON:

Yes. The CR 97 at Daniel Webster Drive that project was completed and the voucher has been paid in the amount of \$1663.43.

CHAIRMAN COOPER:

That is the only reimbursement to-date?

MR. SHANNON:

Yes, sir.

LEGISLATOR TOWLE:

I want to make a motion.

CHAIRMAN GULDI:

Recognizing Legislator Towle for purposes of a motion.

LEGISLATOR TOWLE:

I make a motion to approve 1478.

CHAIRMAN GULDI:

I'll second the motion to approve 1478 for purposes of defeating.

LEGISLATOR TOWLE:

Okay.

CHAIRMAN GULDI:

Any debate on the motion?

LEGISLATOR FISHER:

(inaudible)

CHAIRMAN GULDI:

Motion to table I don't hear a second on the motion to table. Motion to table fails. All those in favor of approving 1478. Zero. All those opposed?

LEGISLATOR TOWLE:

Opposed.

CHAIRMAN COOPER:

Opposed.

LEGISLATOR FISHER:

Opposed.

CHAIRMAN GULDI:

Opposed. Four. 1478 is defeated. 0-4. **(Vote: 0-4-0-1 Absent: Binder)** Now the were questions asked by Legislator's that wanted to be entertained in executive session to discuss the possible life settlement of the relocation charges with LIPA and/or litigation to that end. I make

a motion that we go to executive session on that issue approving the presence's of County Law Department, County Department of Public Works, Budget Review, Counsel to the Legislature, legislative staff. I need a second on that motion.

CHAIRMAN COOPER:

Second.

CHAIRMAN GULDI:

Second by Legislator Cooper. Discussion on the exec. session. I'll amend the motion before we call the vote. At the end of exec. session we will reconvene only, but to by having and advising the stenographer what time we ended the executive session. All those in favor? Opposed? We stand at executive session. Let's turn off the mikes.

Executive Session began at 1:25 PM and ended at 1:40 PM.

(Having no further business the Ways and Means Committee was adjourned at 1:40 P.M.)

{ } denotes spelled phonetically.